FILE COPY

IN THE

Supreme Court of The United States

OCTOBER TERM, 1938

NO. 122

CHICOT COUNTY DRAINAGE DISTRICT.....*Petitioner*

v.

THE BAXTER STATE BANK AND
MRS. LENA S. SHIELDS, ...*Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Counsel for Petitioner.

PARAGON PRINTING CO., LITTLE ROCK

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v.

MRS. LENA S. SHIELDS, ...*Respondents*

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Chicot County Drainage District respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The petitioner, Chicot County Drainage District, is a local improvement district located in Chicot County, Arkansas. The respondents are the owners of fourteen bonds in the face amount of $1,000.00 each, issued by the District in 1924.

On June 17, 1935, the District filed a petition in the United States District Court for the Western Division of the Eastern District of Arkansas, wherein it asked for authority to effect a plan of readjustment of its indebtedness (Defendant's Finding of Fact No. 3, R. 84). This action was entitled "In the Matter of Chicot County Drainage District, Bankrupt," and was cause number 4357 in said court. It will be referred to hereafter as the bankruptcy case. It was filed under authority of the First Municipal Bankruptcy Act, 48 Stat. at L. 798, Chapter 345, Paragraph 1 (U. S. C. A. Title 11, Paragraph 303). The provisions of the act were fully complied with (Defendant's Finding of Fact No. 5, R. 84). Respondents had actual notice of the proceedings (Defendant's Finding of Fact No. 4, R. 84). On March 28, 1936, the District Court entered a final decree in the above-mentioned bankruptcy case, approving the plan of debt readjustment (R. 53). Said decree, after providing for a discharge of the District's indebtedness for about 36c on the dollar, provides, in part, as follows:

> "(c) That all the old bonds and other obligations of the petitioning District affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever

therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof;" (R. 57).

Bondholders of the District holding $705,087.06 face amount of said bonds accepted the proposed plan of debt readjustment and were paid off in accordance with said plan. The holders of $57,449.37 face amount of bonds had not, at the time the final decree was entered, accepted said plan and the District was required to deposit with the clerk of the court the sum of $20,603.10 in order that the clerk might pay said bonds when they were deposited with him for that purpose (R. 53-58). The fourteen bonds represented in the present suit are part of those which were not deposited in accordance with the plan. Neither of the respondents appealed from said decree (Defendant's Finding of Fact No. 9, R. 86).

Thereafter, and on May 25, 1936, this court, in the case of *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513; 56 Sup. Ct. 892, 80 L. Ed. 1309, held that the First Municipal Bankruptcy Act was unconstitutional.

On July 24, 1937, sixteen months after the bankruptcy decree and fourteen months after the decision in the Ashton case, the respondents instituted this action, seeking judgment against the petitioner for the full face amount of their fourteen bonds, together with all past due interest (R. 3-5). The District pleaded as res judicata the final decree of the District Court in the bankruptcy case hereinbefore mentioned (R. 6-13). On June 2, 1938, the Dis-

trict Court rendered judgment in favor of the respondents for the full amount prayed in the complaint (R. 14-15).

In the meantime, and on the 16th day of August, 1937, the Second Municipal Bankruptcy Act became a law, 50 Stat. at L. 654, Chapter 657, (U. S. C. A. Title 11, Section 401); and on the 25th day of April, 1938, this court, in the case of *United States* v. *Bekins, et al*, 304 U. S. 27; 58 Sup. Ct. 811, 82 L. Ed. 1137, held that said act was constitutional and valid.

The case was appealed to the Circuit Court of Appeals for the Eighth Circuit, and on April 29, 1939, said court affirmed the judgment of the District Court (R. 97-101), Judge Woodrough dissenting (R. 101). Petition for rehearing was denied on May 18, 1939 (R. 115).

The Honorable Circuit Court of Appeals, in its opinion, stated: "The decree entered was a nullity and constituted no defense to plaintiff's action." (R. 101).

The petitioner takes the position that the aforesaid holding, to the effect that the decree entered in the bankruptcy case is void, is erroneous and untenable. It is submitted that at the time the bankruptcy decree was entered the District Court had jurisdiction; that said decree is valid and binding; that it is not subject to collateral attack; and that it is res adjudicata of the issues involved in this case.

B.

BASIS UPON WHICH THIS COURT HAS JURISDICTION.

Jurisdiction to issue the writ requested is found in Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938, 28 U. S. C. A., Section 347(a).

The following cases sustain the jurisdiction of this court in this case:

Magnum Import Co., v. *Coty*, 262 U. S. 159; 43 S. Ct. 531, 67 L. Ed. 922;

National Labor Relations Bd. v. *Mackay Radio & Teleg. Co.*, 304 U. S. 333, 58 S. Ct. 904, 82 L. Ed. 1381;

Gay v. *Ruff*, 292 U. S. 25, 30; 78 L. Ed. 1098, 1104 (1933).

C.

THE QUESTIONS PRESENTED.

The only question presented by this petition is whether a judgment of a United States District Court rendered in pursuance to a petition filed by a local improvement district under and by virtue of the First Municipal Bankruptcy Act, 48 Stat. at L. 798, Chapter 345, Paragraph 1, (U. S. C. A. Title 11, Paragraph 303), prior to the time this court held said act to be unconstitutional, is valid and binding as against a party to said action where no appeal has been taken from said decree and no motion or other proceeding had to vacate same.

This question, for the purpose of argument, is divided into two sub-divisions, as follows: A, whether the bankruptcy decree was wholly void; and, B, whether the constitutional objections which existed in the Ashton case were present in the bankruptcy case here involved, and whether, if present, respondents could have raised them on direct appeal from the bankruptcy decree.

D.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The Honorable Circuit Court of Appeals for the Eighth Circuit has rendered a decision which, it is submitted, is erroneous and which involves an important question of federal law which has not been settled by this court, and which is of sufficient importance that this court should definitely settle said issue.

PRAYER FOR WRIT.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Honorable Circuit Court of Appeals for the Eighth Circuit, at St. Louis, demanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 11,342 At Law on its docket and entitled "Chicot County Drainage District, Appellant, v. The Baxter State Bank and Mrs. Lena S. Shields, Appellees" and that the said judgment of said court may be reversed by this Honorable Court, and that

your petitioner may have such other relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

CHICOT COUNTY DRAINAGE DISTRICT,

By.....

JAMES R. YERGER,
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.....

GROVER T. OWENS,

.....

S. LARKER EHRMAN,

.....

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1938

No. ——

CHICOT COUNTY DRAINAGE DISTRICT, *Petitioner*

vs.

THE BAXTER STATE BANK AND
MRS. LENA S. SHIELDS, *Respondents*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinions in the Court of Appeals for the Eighth Circuit have not been reported. The opinion of the majority is found in the record at pages 97 to 101, and the dissenting opinion at page 101.

II.

Statement of the Case.

The statement given in the petition under the heading "Summary Statement of the Matter Involved" is, we be-

lieve, a sufficient statement of the case and will, therefore, not be repeated here.

III.

Specifications of Errors.

1. The lower court erred in holding that the decree of the United States District Court for the Eastern District of Arkansas, Western Division, under date of March 28, 1936, was void and did not constitute a defense to this action.

IV.

Summary of Argument.

THE COURT BELOW HAS ERRONEOUSLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN SETTLED BY THIS COURT AND WHICH IS OF SUFFICIENT IMPORTANCE THAT THIS COURT SHOULD DEFINITELY SETTLE SAID ISSUE.

A.

THE BANRUPTCY DECREE WAS NOT WHOLLY VOID.

B.

THE CONSTITUTIONAL OBJECTIONS WHICH EXISTED IN THE ASHTON CASE WERE NOT PRESENT IN THE BANKRUPTCY CASE AT ISSUE HERE, AND EVEN IF SAID OBJECTIONS WERE PRESENT THE RESPONDENTS COULD NOT HAVE RAISED THEM UPON DIRECT APPEAL.

ARUGMENT.

Point One.

THE COURT BELOW HAS ERRONEOUSLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN SETTLED BY THIS COURT AND WHICH IS OF SUFFICIENT IMPORTANCE THAT THIS COURT SHOULD DEFINITELY SETTLE SAID ISSUE.

A.

The Bankruptcy Decree Was Not Wholly Void.

The court below has held in this case that a decision of a United States District Court in a case filed pursuant to the First Municipal Bankruptcy Act, 48 Stat. at L., 798, Chapter 345, U. S. C. A. Title 11, Paragraph 303, was void and subject to collateral attack, even though that decision was rendered prior to the time said First Municipal Bankruptcy Act had been declared unconstitutional, and even though no appeal was taken from said decree and no motion or proceeding of any kind or nature was taken in the court rendering the decree to have it set aside. Furthermore, in the proceedings in the District Court culminating in the decree of March 28, 1936, no constitutional issues were raised, and had an appeal been taken from that decree, under the well settled doctrine of this court the constitutional issues could not have been raised upon appeal. *Wong Tai* v. *U. S.*, 273 U. S. 66, 47 S. Ct. 300, 71 L. Ed. 545.

Counsel have been unable to find that this precise question has ever been decided by this court, and the ques-

tion is, we submit, of sufficient importance that it should be definitely settled by this court.

The First Municipal Bankruptcy Act became a law as an amendment to the Bankruptcy Act of 1898 on May 24, 1934. It was not declared unconstitutional by this court until May 25, 1936. During the two years that this law was on the statute books there were undoubtedly a great number of cases instituted by improvement districts for the purpose of effecting a composition of debt. The case of Chicot County Drainage District is one instance. Undoubtedly there are many more. The question at issue is the status of decrees rendered during this interim. Shall a mere technicality in the wording of the act be allowed to nullify all the proceedings taken thereunder? Undoubtedly Congress had the power to effect the purposes of the act. This cannot be disputed.

United States v. *Bekins, et al,* 304 U. S. 27, 58 S. Ct. 811, 82 L. Ed. 1137 (1938).

The subject treated in the act was related to the general subject of bankruptcies. The fact that under the wording of the first act an involuntary petition in bankruptcy might have been filed against a political subdivision of a state was held sufficient to render the act unconstitutional.

Ashton v. *Cameron County Water Improvement District,* 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309 (1936).

This defect in the wording of the act was cured by Congress when it enacted the Second Municipal Bankrupt-

cy Act, which was subsequently held constitutional by this court. *United States* v. *Bekins, supra.*

It is submitted that under these circumstances, where a United States District Court grants relief and enters a final decree, such final decree is binding upon the parties to it in the absence of an appeal, even though thereafter the act was held to be unconstitutional. The constitutional question arose in an entirely separate and distinct action.

The fact that a petition was filed in the United States District Court praying relief under an act of Congress which authorized the District Court to grant such relief imposed upon the court the duty to decide the following questions: First, whether or not it had jurisdiction to decide the matter in controversy; and, second, whether or not a cause of action was stated upon which relief could be granted. The determination of either of these questions was an exercise of jurisdiction by the District Court and binding upon the parties in the absence of an appeal. The mere fact that, in passing upon these issues, the court was called upon to determine the constitutionality of an act of Congress does not divest it of jurisdiction. The court held, inferentially at least, that the act was valid and this adjudication should be binding on the parties to the action in the absence of an appeal.

See:

Louisville Trust Co. v. *Cominger*, 184 U. S. 18, 26, 22 S. Ct. 293, 46 L. Ed. 413 (1902).

This court, in the case of *Dowell* v. *Applegate*, 152 U. S. 327, 14 S. Ct. 611, 38 L. Ed. 463 (1893), said in passing upon the validity of a decree of a Federal Circuit Court:

"Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise than on writ of error or appeal to this court."

There can be no question as to the service in the bankruptcy case. The creditors of the District were served by publication of warning orders and by notice through registered mail to each of them (R. 84). The plaintiff in this case actually received these notices and had actual notice of the pendency of the suit (R. 84). Neither of them, however, appeared in said action or attempted in any way to contest the validity of the proceedings (R. 86). This method of obtaining service in bankruptcy proceedings has been upheld.

In re Greyling Realty Corporation, 74 Fed. (2d) 734; Cert. den. 294 U. S. 725, 55 Sup. Ct. 639, 79 L. Ed. 1256.

In the case of *Hartford Life Insurance Company* v. *Johnson*, 268 Fed. 30 (1920), the court made this statement:

"It is true the jurisdictional allegations of a complaint may be put in issue by proper plea, but even in such a case the court in deciding such a plea exercises jurisdiction. Even if it sustains its jurisdiction erroneously, the judgment is not subject to collateral attack, although cause for reversal upon appeal."

It is submitted that there is a distinction in cases where a federal district court exercises its jurisdiction in a cause where Congress can legally bestow such jurisdiction upon

the district court, and has ineffectively attempted to do so, and cases where under no circumstances could Congress confer jurisdiction upon the district courts. An illustration might clarify this distinction. Suppose, for instance, that Congress passed an act granting to the district courts jurisdiction of all cases involving over $500.00 where diversity of citizenship exists; and suppose further that in the process of enacting such an act Congress failed to comply with all the technical requirements necessary to passage. If, after the federal district courts had exercised jurisdiction under such an act for several years, the Supreme Court of the United States, in a case properly before it, should hold the act invalid on account of its improper passage in Congress, we do not believe such a decision would have the effect of nullifying the judgments theretofore rendered under the act. We believe that parties to any litigation filed under the act would be bound by the judgments in the absence of an appeal.

To take another example, suppose that a case should now reach the Supreme Court involving the validity of the Federal Interpleader Statute, Section 24, Sub-section 26, of the Judicial Code, as amended, U. S. C. A. Title 28, Section 41 (26); and suppose that this court should hold for some reason that said section of the code was invalid. We submit that such a holding would not make void all prior judgments rendered by the Federal District Courts exercising jurisdiction by virtue of said section of the code. We submit that said judgments would not be subject to collateral attack and that any parties to said proceedings who were served in accordance with the provisions

of the act would be bound by the judgments therein rendered in the absence of an appeal.

The same question is presented in the case at bar. Congress admittedly had the power to give to the district court jurisdiction over compositions by municipalities and improvement districts. Congress attempted to confer this power, and the Federal District Court for the Eastern District of Arkansas acted in reliance thereon. At that time the act stood unimpeached. If the respondents believed that the District Court was acting in excess of its jurisdiction they should have presented their objections to that court. This case is, we submit, entirely different from those cases in which courts act in excess of their jurisdiction without any color of right.

It is also submitted that the validity or invalidity of the First Municipal Bankruptcy Act was a question which affected primarily the merits of the cause of action, and not the jurisdiction of the court. In other words, if the statute was constitutional, then the District, in the bankruptcy case, stated a good cause of action in its petition. If it was not, no cause of action was stated. In either event, we submit, the district court had jurisdiction to pass upon the issues involved. The Chicot County Drainage District is a corporate entity and may sue and be sued in the courts. Act 405, Section 5, of the Extraordinary Session of the Forty-Second General Assembly of the State of Arkansas, approved February 25, 1920. It brought an action in the District Court of the United States against all its creditors, in which action it asked that a plan of reorganization submitted by it be approved by the court, and that

after such approval the creditors of the District be compelled to surrender their obligations against the District and receive in return therefor the benefits provided under the plan of reorganization. The district court, even in the absence of statute, could have granted all the relief asked, except that it could not compel a dissenting creditor to exchange his obligations against the District for the benefits provided in the plan of reorganization. The validity of the First Municipal Bankruptcy Act in such a case is, therefore, a question which goes to the merits of the cause of action stated, and not one which goes to the jurisdiction of the court. As said by the Circuit Court of Appeals for the Eighth Circuit in the case of *Woods Bros. Construction Co.* v. *Yankton County*, 54 Fed. (2d) 304, (1931):

> "It is not necessary that the right asserted be based upon a valid law. That question goes to the merits of the action and not to the jurisdiction of the court."

Our argument on this point is aptly stated by the Supreme Court of Wisconsin in the case of *Arnold* v. *Booth*, 14 Wis. 180 (1861). The court said:

> "Obviously the cause of action in the suit of Garland against Booth was a penalty given by the Fugitive Slave Law for a violation of its provisions. But whether there was any law in existence giving this right of action, and, if so, whether the law was valid and binding, were legitimate matters of consideration for the district court, as was the question of its violation. The court might have held that there was no cause of action because the law was void. It had jurisdiction of the case thus to decide. This it seems

to me is incontestable. I do not wish to be understood as saying that a court may give itself jurisdiction by deciding that it has it, or that other courts would be concluded by such a decision when that question came before them. For this would be merely holding that the exercise of power by a court proved the rightful exercise of such power—a proposition for which no one would probably contend. I am endeavoring to make obvious to others, what is plain to my own mind, namely, that the question arising upon the record offered in evidence is not really one going to the jurisdiction of the district court, but one touching the question as to whether in fact there was any cause of action. If I am right in this view of the case, it would then follow that the decision of that court holding that a good cause of action existed, however erroneous, must be binding until reversed."

"* * * It seems to me that it is analogous in principle, and that the same rule must apply here that is held to apply in cases where the jurisdiction of a court extends over a class of cases but the court gives judgment in a particular case where the facts and law do not authorize it."

This court, in the case of *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923), made the following statement, which is applicable to the issues here:

"If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision whether right or wrong, was an exercise of

jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication."

The cases upon which the Circuit Court of Appeals relied in deciding this case are not in point. Main reliance apparently is placed upon the cases of *Chicago, I. & L. R. Co.* v. *Hackett*, 228 U. S. 559, and *Security Savings Bank* v. *Connell* (Ia.), 200 N. W. 8 (R. 100). The first of the above cited cases involved the question as to whether the first Federal Employers' Liability Act of June 11, 1906, superseded an Indiana statute dealing with the same subject-matter as the Federal Act. The court merely held that the Federal Employers' Liability Act, being unconstitutional, did not supersede the State Statute. The excerpt from the court's opinion quoted in the opinion of the Circuit Court of Appeals when standing alone and unexplained is apparently a very damaging statement of law, but when the entire case is read, it is apparent that the case is not in point.

The second of the above cited cases, with due deference to the Court of Appeals, is more favorable to petitioner's case than to the respondent. That case involved the basis upon which certain bank stock should be assessed for taxation. The bank contended that the value of certain United States Liberty Bonds should be deducted in determining the value of the shares of the capital stock of the company for purposes of taxation, and relied upon a judgment to that effect involving the same question in a

prior year. In reply it was shown that the statute which was the basis of the prior adjudication had since been held invalid. The court merely held that the basis of taxation might change from year to year and that the prior judgment was not res judicata in a subsequent year. The court said:

> "To meet the contention of appellant, it is not necessary to hold that the former decrees are void for all purposes. No such question is before us."

The court therefore held inferentially that the prior judgment was binding as to the tax due in the year covered by the judgment, even though based on an unconstitutional act.

The Honorable Circuit Court of Appeals in its opinion further said:

> "* * * It is sufficient for the purpose of this opinion to state that the proceeding taken was that prescribed by the statute, and if the court acquired jurisdiction, it was because of a compliance with the procedure so prescribed, and not otherwise.
>
> "If the decree was void, it could not be successfully pleaded as res judicata. *McDonald* v. *Mabee*, 243 U. S. 90. The act which purported to confer jurisdiction, being unconstitutional, was void and in legal contemplation was inoperative."

We respectfully submit that this statement begs the question. It is true that the statute conferring jurisdiction was unconstitutional, but said statute was not unconstitutional because Congress did not have power to confer

jurisdiction in the district courts in such cases, but because, as the court held in the Ashton case, the act as worded was an unlawful interference with State's rights, as applied in the Ashton case.

The act itself purported to confer jurisdiction, and when the Chicot County Drainage District filed its petition in the original bankruptcy case, it stated that it was filing same under the authority of said act. (R. 19). In determining its jurisdiction and in determining the District's right to relief, the district court, in the bankruptcy case, necessarily passed upon the validity of the statute which was the basis of the action. This determination was an exercise of jurisdiction. The court decided that issue, and by rendering its decree on March 28, 1936, held that the act was valid.

This adjudication, we submit, is final and binding upon the respondents in the absence of any appeal therefrom.

B.

THE CONSTITUTIONAL OBJECTIONS WHICH EXISTED IN THE ASHTON CASE WERE NOT PRESENT IN THE BANKRUPTCY CASE AT ISSUE HERE, AND EVEN IF SAID OBJECTIONS WERE PRESENT, THE RESPONDENTS COULD NOT HAVE RAISED THEM UPON DIRECT APPEAL.

Under Point A above we have argued that the decree in the bankruptcy case was not wholly void, that it is not subject to collateral attack, and that it is res judicata of every issue in this case.

To say the least, the respondents can go no further by collateral attack on said bankruptcy decree than they could have gone by direct appeal, and it is submitted that had these respondents taken an appeal from the bankruptcy decree of March 28, 1936, said decree would have been affirmed.

In the first place, the unconstitutionality of the statute must be especially pleaded, and the failure so to do would constitute a waiver of any defense on that ground.

Wong Tai v. *U. S.*, 273 U. S. 77, 47 S. Ct. 300, 71 L. Ed. 545;

New York Ex Rel v. *Kleinert*, 268 U. S. 646, 45 S. Ct. 618, 69 L. Ed. 1135.

The respondents filed no pleading in the district court at the time the bankruptcy proceedings were had. Therefore, under the well established rules of this court, no constitutional questions could have been argued upon appeal.

Furthermore, the status of Chicot County Drainage District is quite different from that of Cameron County Water Improvement District No. 1, and for this reason it is very questionable whether, had respondents appealed from the bankruptcy decree, a ruling could have been secured upon the constitutionality of the First Municipal Bankruptcy Act. The act by its terms applied "to any municipality or other political sub-division of any state, including (but not hereby limiting the generality of the foregoing) any county, city burrough, village, parish, town or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee,

sewer, or paving, sanitary, port, improvement, or other districts."

U. S. C. A. Title 11, Section 303(a), Sub-section (1) of said section is the separability clause and reads as follows:

> "If any provision of this chapter *or the application thereof to any person* or circumstances is held invalid, the remainder of the chapter, *or the application of such provision to other persons* or circumstances, shall not be affected thereby." (italics ours).

The decision in the Ashton case is based upon the finding that Cameron County Water Improvement District No. 1 was a political sub-division of the state. The court said:

> "It is plain enough that respondent is a political sub-division of the state, created for the local exercise of her sovereign powers and that the right to borrow money is essential to its operations. * * * Its fiscal affairs are those of the state not subject to control or interference by the national government unless the right so to do is definitely accorded by the federal constitution."

The situation of Chicot County Drainage District is entirely different. This district is not a political sub-division of the State of Arkansas, and the objection to the act which was raised in the Ashton case probably would not have arisen in the bankruptcy case here had it been appealed.

In the case of *Drainage District No. 7 of Poinsett County* v. *Hutchins*, 184 Ark. 521, 530, 42 S. W. (2d) 996, 1,000, the Supreme Court of Arkansas defined drainage districts as "the agent of the property owners in the district whose interests are affected by the duties they perform. They exercise no governmental powers except those expressly or impliedly granted by the Legislature. They are not political or civil divisions of the state like counties and municipal corporations created to aid in the general administration of the government. They are not created for political purposes or for the administration of civil government."

See also:

In re Drainage District No. 7 of Poinsett County, Arkansas, 21 Fed. Sup. 798, 803.

The First Municipal Bankruptcy Act was not, therefore, unconstitutional as applied to Chicot County Drainage District of Chicot County, Arkansas. It does not, as applied to this district, interfere with any rights of the State of Arkansas or of any of its political sub-divisions.

The constitutional question which was raised in the Ashton case and which was held to be sufficient to make the act unconstitutional probably could not have been raised in this case had an appeal been taken from the bankruptcy decree.

See:

Iroquois Transp. Co. v. *De Laney Forge & Iron Co.*, 205 U. S. 354, 360; 51 L. Ed. 836, 840 (1907);

Champlin Refining Co. v. *Corporation Comm.*, 286 U. S. 210, 234, 235, 238; 76 L. Ed. 1062, 1078, 1080 (1932);

Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8, 22; 76 L. Ed. 136, 145 (1931);

Utah Power & Light Co. v. *Pfast*, 286 U. S. 165, 186; 76 L. Ed. 1038, 1049 (1932);

Henneford v. *Silas Mason Co.*, 300 U. S. 577, 583; 81 L. Ed. 814, 819 (1937);

Young v. *McNeal-Edwards Co.*, 283 U. S. 398, 400; 75 L. Ed. 1140, 1141 (1931).

We do not suggest that this court should retry the bankruptcy case upon its merits. We merely suggest that had an appeal been taken from the bankruptcy decree which has been pleaded as res judicata, the appellate court might have been required under the facts of said case to affirm the judgment of the trial court. This suggestion is made to demonstrate the serious import of the decision of the lower court to the effect that when the Supreme Court of the United States handed down its decision in the Ashton case ipso facto, all judgments rendered under the First Municipal Bankruptcy Act were void in toto.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers in order that the judgment of the Honorable Circuit Court of Appeals for the Eighth Circuit may be reviewed, and for such purpose petitioner prays that Writ of Certiorari issue to said court, and, on final hearing, the judgment of said court be reversed and the cause remanded to the District Court.

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